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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~6356~~ 70-5058

DOROTHY LYNCH, et al.,

Appellants,

v.

HOUSEHOLD FINANCE CORPORATION, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR APPELLANTS

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TABLE OF CONTENTS

	Page
OPINION BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTES INVOLVED	3
STATEMENT OF THE CASE	4
SUMMARY OF ARGUMENT	9
ARGUMENT:	13
I. The District of Connecticut's interpretation of 28 U.S.C. § 1343(3) and 28 U.S.C. § 2283 deprives indigent litigants of any forum for vindicating federally-guaranteed constitutional rights	13
II. Where wage-earners alleged that Connecticut deputy sheriffs, acting in concert with alleged creditors and their attorneys, deprived them of the use of their property in violation of the Fourteenth Amendment, they properly invoked the jurisdiction of the district court	19
A. The district court's dismissal, on the ground that § 1343(3) did not confer jurisdiction to redress unconstitutional deprivations of property, was erroneous	19
B. The inconsistent and unpredictable decisions spawned by the "personal liberty—property rights" formula require its rejection as a test for determining § 1343(3) jurisdiction	22
C. Sections 1983 and 1343(3) required the district court to adjudicate wage-earners' complaints that persons acting under color of state law had garnished their accounts in violation of the Fourteenth Amendment	28
1. The legislative and judicial history of sections 1983 and 1343(3) conclusively demonstrate that those statutes were designed to redress deprivations of prop-	

Page

erty, without procedural due process or equal protection, by persons acting under color of state law 28

2. 28 U.S.C. § 1331 has not restricted the scope of Civil Rights Act jurisdiction 33

III. Where wage-earners sought declaratory and injunctive relief, on behalf of themselves and all others similarly situated, against garnishments levied summarily and without judicial authorization, control or involvement, the district court erred in dismissing the complaints on the ground that 28 U.S.C. § 2283 barred the award of any relief 35

A. Summary garnishments are not "proceedings in a State court," within the meaning of 28 U.S.C. § 2283 35

B. The anti-injunction statute does not excuse a federal court from considering the propriety of declaratory and future injunctive relief, on behalf of the named plaintiffs and others similarly situated 39

C. The district court's inference, on a barren record and pursuant to motions to dismiss, that injunctive relief against summary garnishments would "probably" interfere with "existing creditors' suits," was improper 40

D. If summary garnishments are proceedings in a state court, § 1983 authorized the district court to grant an injunction on behalf of wage-earners who are denied a state court forum 42

CONCLUSION 45

APPENDIX 46a

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Page

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Alterman Transp. Lines. v. P.S.C. of Tenn, 259 F.Supp. 486 (M.D. Tenn. 1966), *aff'd. mem.*, 386 U.S. 262 (1967) 33

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Baker v. Carr, 369 U.S. 186 (1962) 2

Barbier v. Connolly, 113 U.S. 27 (1885) 17

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Chicago B & Q R Co. v. Chicago, 166 U.S. 226 (1897) 30, 32

Civil Rights Cases, 109 U.S. 3 (1883) 31

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Conley v. Gibson, 355 U.S. 41 (1957) 12, 42

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Page

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Dale v. Hahn, No. 35059, ___ F.2d ___ (2nd Cir. 1971) 26, 28

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Haines v. Carpenter, 91 U.S. 254 (1875) 41

Hale v. Bimco Trading Co., 306 U.S. 375 (1939) 38, 41

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Harris v. Barone, 147 Conn. 233, 158 A.2d 855 (1960) 15, 16

Hill v. Martin, 296 U.S. 393 (1935) 35

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Page

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Page

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Page

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Page

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United States Constitution
Amendment 14 ..... 10, 13, 19, 28, 29, 30
Due Process Clause 21
Privileges and Immunities Clause 21
Article III, § 2 33

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15 U.S.C. § 1681(a)(2) 25
18 U.S.C. § 242 34
28 U.S.C. § 1253 ..... 2, 39
28 U.S.C. § 1291 16
28 U.S.C. § 1331 ..... 10, 11, 19, 20, 21, 33, 34
28 U.S.C. § 1341 ..... 21, 33
28 U.S.C. § 1343 ..... *passim*
28 U.S.C. § 2101 2
28 U.S.C. § 2281 2
28 U.S.C. § 2283 ..... *passim*
28 U.S.C. § 2284 2
42 U.S.C. § 1983 ..... *passim*
Act of March 3, 1875, 18 Stat. 470 ..... 10, 33
Civil Rights Act of 1866, 14 Stat. 27 ..... 10, 28, 29, 30
Ku Klux Act of 1871, 17 Stat. 13 ..... 10, 19, 31, 33, 35
Conn. Gen. Stat.
§ 51-85 17
§ 51-265 16
§ 52-48a 14
§ 52-57 36
§ 52-89 17
§ 52-279 ..... 4, 17
§ 52-280 4
§ 52-288 17
§ 52-301 14
§ 52-302 14
§ 52-304 14

Page

§ 52-329 ..... 3, 4, 11, 14, 37
§ 52-337a 17
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	Page
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Note, 49 B.U.L. Rev. 377 (1969)	20, 34
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Note, 66 Harv. L. Rev. 1285 (1953)	20, 21, 28
Note, 83 Harv. L. Rev. 1870 (1970)	43
Note, 43 N.Y.U.L. Rev. 1208 (1968)	20, 34
Note, 21 Rutg.L. Rev. 92 (1966)	31
Other Authorities:	
Federal Rule of Civil Procedure 23(c)	40
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Proceedings of the Connecticut House of Representatives (May 14, 1969)	17

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR APPELLANTS

Appellants appeal from the judgment of the United States District Court for the District of Connecticut, entered on October 22, 1970, dismissing their complaints without an evidentiary hearing, upon the appellees' motions to dismiss.

OPINION BELOW

The opinion of the District Court for the District of Connecticut (App. 20-27) is reported at 318 F.Supp. 1111.

JURISDICTION

This suit was brought under 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983, for a permanent injunction and a declaratory judgment that Connecticut attachment and garnishment statutes were unconstitutional in light of *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969). A three-judge district court was convened on March 9, 1970, pursuant to 28 U.S.C. §§ 2281 and 2284. The judgment of the district court was entered on October 22, 1970, and notices of appeal were filed in that court on November 19, 1970. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1253 and Section 2101(b). *American Federation of Labor v. Watson*, 327 U.S. 582, 591-593 (1946); *Baker v. Carr*, 369 U.S. 186 (1962); *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); *Damico v. California*, 389 U.S. 416 (1967).

QUESTIONS PRESENTED

1. Where wage-earners alleged that they had been deprived, under color of state law, of property necessary for subsistence without procedural due process or equal protection, did the district court err in refusing jurisdiction pursuant to 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983?

2. Where wage-earners sought declaratory and injunctive relief, on behalf of themselves and others similarly situated, against garnishments levied summarily and without judicial authorization or review, and where wage-earners had no redress in the state courts, did the district court err in holding, as a threshold issue, that 28 U.S.C. § 2283 barred the award of any relief?

STATUTES INVOLVED

Title 28, United States Code, § 1343(3) provides:

Civil Rights and Elective Franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

Title 28, United States Code, § 2283 provides:

Stay of State Court Proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Title 42, United States Code, § 1983 provides:

Civil Action for Deprivation of Rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Title 52, Connecticut General Statutes, § 329 provides:

Process of Foreign Attachment

When the effects of the defendant in any civil action in which a judgment or decree for the payment of money may be rendered are concealed in the hands of his agent or trustee so that they cannot be found or attached, or when a debt is due from any person to such defendant, or when any debt,

legacy or distributive share is or may become due to such defendant from the estate of any deceased person or insolvent debtor, the plaintiff may insert in his writ a direction to the officer to leave a true and attested copy thereof and of the accompanying complaint, at least twelve days in the case of the superior court or the court of common pleas, or six days in the case of the circuit court, before the session of the court to which it is returnable, with such agent, trustee or debtor of the defendant, or, as the case may be, with the executor, administrator or trustee of such estate, or at the usual place of abode of such garnishee; and from the time of leaving such copy all the effects of the defendant in the hands of any such garnishee, and any debt due from any such garnishee to the defendant, and any debt, legacy or distributive share, due or that may become due to him from such executor, administrator or trustee in insolvency, not exempt from execution, shall be secured in the hands of such garnishee to pay such judgment as the plaintiff may recover.

STATEMENT OF THE CASE

These actions challenged the constitutionality of Connecticut statutes authorizing Connecticut deputy sheriffs, at the direction of attorneys for alleged creditors, summarily to garnish wages deposited by Connecticut residents in their checking accounts and credit union accounts (App. 5-6, 33-34).[1] Wage-earners regularly use the deposited funds to meet recurrent and emergency expenses for food, clothing, shelter, and medicine (App. 7, 34-35).

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[1] The garnishments are levied pursuant to Conn.Gen.Stat. § 52-329. These actions also challenged the constitutionality of Conn.Gen.Stats. §§ 52-279, 52-280, which authorize deputy sheriffs summarily to attach assets of Connecticut residents at the direction of attorneys for alleged creditors. Since no named plaintiff in this appeal was subjected to an attachment, we shall limit our discussion to prejudgment garnishment.

Deputy sheriffs levy garnishments pursuant to writs issued by creditors' attorneys, prior to institution of state court civil suits for money damages. A deputy sheriff may freeze a wage-earner's account, containing moneys necessary for subsistence, before serving him with process and before the case is docketed in the state court. Garnishment is levied without the order, authorization, or supervision of any court (App. 8-9, 35-37).

Garnishment is levied without prior notice to the alleged debtor, and without any opportunity to be heard by any judicial or quasi-judicial tribunal. As a condition of levying a garnishment, the alleged creditor is not required to post a bond, to demonstrate the existence of a meritorious claim, or to show that the alleged debtor might conceal his property. Since the deputy sheriff must serve process upon the resident debtor, garnishment does not confer jurisdiction upon the state court (App. 8-9, 36-37). No state court hearing, order or action is necessary for the creditor to maintain the garnishment until trial on the merits or settlement of the civil suit (App. 23 n. 2).

The named plaintiffs are low-income wage-earners, residents of Connecticut, whose checking and credit union accounts were garnished pursuant to the above-described practice. The actions below were brought on their behalf and on behalf of other Connecticut residents whose assets are frozen by garnishment, or who are threatened in the future with prejudgment garnishment (App. 6, 34). The named wage-earners sued the class of Connecticut sheriffs, deputy sheriffs and constables, who levy on bank accounts by serving writs of garnishment (App. 6-7, 34). They also sued their garnishees, and alleged creditors and attorneys who had instructed Connecticut deputy sheriffs to garnish wages deposited in their accounts. The wage-earners requested that a three-judge district court declare unconstitutional the Connecticut practice of summary garnishment; and that the court permanently enjoin the levy of prejudgment garnishments, presently and prospectively, in the

absence of notice and hearing. The district court was *not* requested to enjoin the civil actions for money damages which were pending in state court against the wage-earners (App. 6, 10, 34, 37-38).

The named wage-earners proceeded in forma pauperis in the district court (App. 15-16, 43-45). A three-judge court was convened on March 9, 1970 (App. 17). That court dismissed the complaints on October 22, 1970, without an evidentiary hearing (App. 19, 21-22), pursuant to their alleged creditors' motions to dismiss (App. 18, 52). On this appeal, therefore, the wage-earners' allegations stand admitted. *Boddie v. Connecticut*, 39 L.W. 4294 (1971); *Jenkins v. McKeithen*, 395 U.S. 411, 421-22 (1969).

Dorothy Lynch, plaintiff below, is employed by St. Raphael's Hospital in New Haven. Her only income, $69.00 weekly, supports herself and her younger son, and partially supports her older son. In February, 1968, she authorized her employer to withhold ten dollars weekly from her wages for deposit in a credit union account at the hospital. She has used these deposited wages in the past for necessary family needs (App. 7-8).

Household Finance Corporation brought suit on a note against Mrs. Lynch for $525.00 damages in Connecticut's sixth circuit court. By order of the finance company's attorney, deputy sheriff Jack Friedler garnished her account on June 23, 1969, by serving a writ of garnishment on the Hospital of St. Raphael Credit Union. He subsequently served her with process.[2] No notice to Mrs. Lynch or opportunity to be heard preceded the garnishment of her account, which contained $494.83. The garnishment was levied without court order or authorization (App. 8, 11-14).

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[2]Mrs. Lynch was served with process on June 26, 1969, three days after garnishment. Process was docketed with the sixth circuit court on July 1, 1969 [Information appears in original record on file at sixth circuit court, # CV6-41837]. See, *St. Paul Fire and Marine Ins. Co. v. Cunningham*, 257 F.2d 731, 732 (9th Cir. 1958) (judicial notice taken of such records).

As a result of the levy, Mrs. Lynch was unable to pay her rent on time, and the family was nearly evicted. Additionally, she encountered difficulty in maintaining her family on a minimally adequate diet (App. 16).

Mrs. Lynch has suffered these hardships although she has valid defenses to the finance company's suit (Plaintiff's brief, filed March 4, 1970, p. 2). Since she is too poor to afford a surety bond, however, she is unable to arrange for release of the garnishment (*Infra*, p. 46a). The garnishment will thus freeze her assets, without any hearing either prior or subsequent to the levy, until trial on the merits or settlement of the case (App. 9, 23 n. 2).

Norma Toro, plaintiff below, earns $85.00 weekly. This income, with a small supplemental grant from the Connecticut State Welfare Department's AFDC program, supports herself and her son. She receives no assistance from her ex-husband, who is the father of her son and from whom she was divorced two years ago. Mrs. Toro has been employed for six months at a shirt factory in New Haven; during this period she has been promoted to a supervisory position. She believes that she may, in the near future, no longer require assistance from the welfare department (App. 34, 45-46).

In October, 1969, Mrs. Toro opened a checking account with the Hamden National Bank, into which she regularly deposited her weekly wages. This account was used for necessary family expenses (App. 34-35, 46). Eugene Camposano, Mrs. Toro's former landlord, sued her in Connecticut's eighth circuit court for back rent allegedly due, and sought $700.00 damages. Pursuant to instructions of the landlord's attorney, Deputy Sheriff Charles Barrett garnished her checking account on January 30, 1970, by serving a writ of garnishment on the Hamden National Bank; he subsequently served her with process (App. 35-36, 38-42).[3] Mrs.

[3]Mrs. Toro was served with process on January 31, 1970, one day after the garnishment. Process was docketed with the eighth circuit court on February 10, 1970 [Information appears in original record on file with the eighth circuit court, # CV8-9353]. See note 2, *supra*.

Toro was given no notice or opportunity to be heard prior to the garnishment of her account, which contained $103.99. The garnishment was levied without any court order or authorization (App. 35-37).

As a result of the garnishment, four of Mrs. Toro's outstanding checks "bounced," exposing her to the possibility of criminal prosecution and eviction. Her credit and reputation were severely damaged. Two of the "bounced" checks were payable to creditors holding security interests in her personal property. One of these creditors, the American Finance Corporation, had a right not only to repossess her automobile, but also to demand the full amount owed on her note. The Hamden National Bank charged her $10.00 "legal expenses" for the garnishment. Mrs. Toro suffered these consequences although she has valid defenses to Camposano's action (App. 36, 46-47).[4]

On March 24, 1970, Camposano, without state court authorization or order, released the garnishment of Mrs. Toro's account (*Infra*, p. 48a). On August 11, 1970, Maurice Dancosse moved to intervene as a plaintiff in Mrs. Toro's action. He alleged a garnishment of his checking account under circumstances identical to those of Mrs. Toro. As the result of the garnishment, he suffered consequences similar to those experienced by Mrs. Toro (R. Doc. Nos. 27-28). His motion to intervene was denied on August 19, 1970, prior to dismissal of the complaints without an evidentiary hearing. The court based its denial on the ground that the "case has been fully submitted" (App. 32).[5]

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[4]Mrs. Toro and Camposano had agreed to terminate any lease agreement existing between them, without liability to Mrs. Toro. Additionally, the premises which Camposano let to Toro were untenantable and contained numerous housing code violations (App. 47-48). See, *Javins v. First National Realty Co.*, 38 L.W. 2596 (D.C. Cir. 1970), cert. den., 39 L.W. 3224 (1970); *LeClair v. Woodward*, No. CV11-5267 (Conn. Cir. Ct. 1970).

[5]Maurice Dancosse filed, on November 20, 1970, an appeal with the court of appeals for the second circuit from the district court's order denying him leave to intervene (App. D, Juris. Statement). The

On October 22, 1970, the three-judge court dismissed the complaints without an evidentiary hearing, pursuant to the alleged creditors' motions to dismiss, on the grounds that it lacked jurisdiction under 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983; and that the award of any relief was barred by the anti-injunction statute, 28 U.S.C. § 2283 (App. 21). This brief demonstrates that the dismissal of the complaints was plainly erroneous.

SUMMARY OF ARGUMENT

Despite the district court's acknowledgement that the wage-earners' constitutional claims were substantial, *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), it dismissed the complaints without an evidentiary hearing. Settled law of the Connecticut Supreme Court similarly denies wage-earners a forum to contest the propriety of garnishments levied on their scarce assets. Without showing any special circumstances, a self-proclaimed creditor may garnish his debtor's property and maintain the garnishment until final disposition of his suit. From the date of levy until trial on the merits or settlement of the case, a garnishment is effective without any order, hearing, action, or participation by the state court. *Sachs v. Nussenbaum*, 92 Conn. 682, 688-89, 104 A. 393, 395 (1918).

Unless this Court reverses the district court's dismissal, Connecticut wage-earners will continue to be deprived of any forum for litigating and vindicating the constitutional rights which this Court established for them in *Sniadach*.

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district court denied his application for leave to appeal in forma pauperis on November 30, 1970 (App. 53-54). Dancosse also filed a notice of appeal with this Court (App. 32).

The court's opinion dismissing the actions suggested, although it did not so hold, that release of the garnishment by Mrs. Toro's former landlord might moot her action (App. 22 n.1), which was brought as a class action (App. 34). The court, however, failed to consider her request for declaratory and injunctive relief from future garnishments with which she was threatened. See *infra*, pp. 39-40.

Lacking judicial review, they may be forced by the imperatives of survival to abandon their defenses and settle claims which have no validity. If they choose to exercise their right to a day in court, they must forego the use of property which is necessary for subsistence. Compare, *Boddie v. Connecticut, supra.*

The district court's dismissal, on the ground that 28 U.S.C. § 1343(3) does not grant jurisdiction to redress deprivations of property in violation of the Fourteenth Amendment, was erroneous. Summary garnishments arbitrarily deprive wage-earners of rights deemed fundamental by the first Reconstruction Congress. Civil Rights Act of 1866, 14 Stat. 27. Prejudgment garnishments levied by Connecticut deputy sheriffs, acting pursuant to instructions of creditors' attorneys, impair wage-earners' ability to subsist, to contract, to control and dispose of their property, and to defend their interests in court. See, *Jones v. Mayer Co.*, 392 U.S. 409 (1968). The protection of these rights from unconstitutional state action was assured by passage of the Fourteenth Amendment. *Railroad Tax Cases*, 13 F. 722 (C.C. Cal. 1882). 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983 guarantee redress for their unconstitutional deprivation in a federal forum. 17 Stat. 13 (1871). Where no state forum exists to safeguard these rights, the responsibility of the federal courts to accept jurisdiction is compelling. *Monroe v. Pape*, 365 U.S. 167 (1961).

The jurisdiction granted by § 1343(3) was not repealed by passage of 28 U.S.C. § 1331 in 1875. 18 Stat. 470. The "revolutionary" expansion of federal jurisdiction wrought by the Act of 1875 belies any such notion. Frankfurter and Landis, *The Business of the Supreme Court* 65 (1928). Absent an unmistakable intention by Congress to the contrary, the Acts of Reconstruction—including §§ 1983 and 1343(3)—apply today with their original force. *United States v. Price*, 383 U.S. 787 (1966); *Jones v. Mayer Co., supra.* The plain meaning of §§ 1983 and 1343(3), buttressed by their history, reflects Congress' deep concern for

maintaining federal vigilance over unconstitutional deprivations, by persons acting under color of state law, of life, liberty and property. *Monroe v. Pape, supra.* Not the faintest glimmer appears of a Congressional intention to relax this vigilance by passage of 28 U.S.C. § 1331 in 1875.

The rationale of the district court's dismissal, that § 1343 (3) provides jurisdiction to redress unconstitutional deprivations of "personal liberty" but not of "property," produces profound uncertainties in the delineation of federal jurisdiction to protect constitutional rights. Decisions pursuant to the "personal liberty-property rights" formula are conflicting and unpredictable. The formula is therefore unacceptable for defining the scope of § 1343(3).

The district court's alternative ground for dismissing the complaints, that 28 U.S.C. § 2283 barred the award of any relief, was similarly erroneous. As the district court itself recognized, summary garnishment in Connecticut is not a "proceeding in a State court," within the meaning of § 2283. Garnishments are routinely levied, maintained and released without any involvement or participation by the state court. The levy of garnishment does not confer jurisdiction in an *in personam* suit against a resident debtor. Rather, service of process on the debtor, occurring after garnishment is levied, creates the state court's jurisdiction and institutes the suit. *Young v. Margiotta,* 136 Conn. 429, 433, 71 A.2d 924, 926 (1950). Garnishment "operates merely to secure any judgment that the plaintiff may obtain." Stephenson, *Connecticut Civil Procedure* 253 (1970 ed.).

Despite the state court's control over the creditor's docketed suit, garnishment is "distinct from and independent of" that suit. *Potter v. Appelby,* 136 Conn. 641, 643, 73 A.2d 819, 820 (1950). The garnished property is not secured under the control of the court, but in the hands of the garnishee. Conn. Gen. Stat. § 52-329. While the active participation and orders of the state court are essential to the progress of the creditor's suit, garnishment is wholly independent of any necessary involvement or participation by

the state court. Lacking any dependence upon the order of a court, summary garnishment in Connecticut must be deemed an out-of-court, non-judicial security remedy, and not a "proceeding in a State court."

The district court invoked § 2283 as a threshold bar to relief on the exclusive ground that enjoining garnishments, levied without notice or hearing, would "probably" interfere with state court proceedings, i.e., "*existing* creditors' suits" (App. 26) (emphasis added). But the wage-earners sought to enjoin prejudgment garnishments which the class of deputy sheriffs would levy, on behalf of alleged creditors, in future state court suits. The district court made no inquiry as to the propriety of prospective relief. Lacking a state forum for adjudicating their claims, the named wage-earners and the class which they represent should not be forced to undergo the suffering which future garnishments entail as a condition to testing their constitutionality. *Younger v. Harris*, 39 L.W. 4201, 4208 n.2 (1971) (Stewart J., concurring). The district court also erroneously failed to treat the wage-earners' request for a declaratory judgment. *Zwickler v. Koota*, 389 U.S. 241 (1967).

Nothing in the record supported the district court's inference that an injunction against summary garnishments would "probably" interfere substantially with existing creditors' suits. State law makes clear that garnishment is distinct from the pending creditor's suit; that the absence of garnishment does not affect the state court's jurisdiction; and that Connecticut is one of the few states permitting unrestricted garnishment by alleged creditors prior to institution of *in personam* damage suits. The court dismissed the complaints on an utterly barren record pursuant to the motions to dismiss. The landlord and the finance company failed to sustain their burden of proof on those motions. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

If summary garnishments are deemed proceedings in a state court, the district court nonetheless erred in refusing to award injunctive relief. 42 U.S.C. § 1983 constitutes an

exception to § 2283 where, as here, wage-earners will otherwise be deprived of substantial Fourteenth Amendment rights without redress in any judicial forum.

ARGUMENT

I. THE DISTRICT OF CONNECTICUT'S INTERPRETATION OF 28 U.S.C. § 1343(3) AND 28 U.S.C. § 2283 DEPRIVES INDIGENT LITIGANTS OF ANY FORUM FOR VINDICATING FEDERALLY-GUARANTEED CONSTITUTIONAL RIGHTS.

In 1969, this Court held that prejudgment garnishment of an alleged debtor's wages, without notice to him or opportunity to be heard, violated the Due Process Clause of the Fourteenth Amendment. *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969). Like Christine Sniadach, these wage-earners have been deprived of the use of their wages without a semblance of procedural due process. Their bank accounts, summarily garnished by alleged creditors, contained wages used for the common necessaries of life. The district court thus agreed that "there is no question of the substantiality of the constitutional claim" (App. 27). The court's dismissal of the complaints, however, effectively bars Connecticut's wage-earners from vindicating in a federal forum the federally-guaranteed constitutional rights which this Court established for them in *Sniadach*.

Like the federal court, Connecticut's courts deny wage-earners a forum to contest the propriety of garnishments levied upon their scarce assets. As the district court below observed, "No court order is required" to garnish a wage-earner's account (App. 23 n. 2).

> The plaintiff or his attorney merely includes in his writ of summons a direction to the sheriff to make an attachment or serve garnishment process.
>
> Stephenson, *Connecticut Civil Procedure* (1970 ed.), p. 151.

Garnishment is levied before the resident debtor is served with process. Service of process brings him within the jur-

isdiction of the court and initiates the state court suit. *Young v. Margiotta*, 136 Conn. 429, 433, 71 A.2d 924, 926 (1950). Since garnishment may occur nearly two months before a creditor must docket his suit in the circuit court, a distraught debtor may abandon his defenses and settle the case without any judicial mediation. Conn. Gen. Stat. §§ 52-48(a), 52-329.[6]

After the suit is docketed, the garnishment remains effective without any order, hearing, or action by the state court. The debtor may elicit a judicial response affording him, at best, only "meager safeguards," in two limited situations. Stephenson, *supra* at 154. The court may permit substitution of a bond with surety, Conn. Gen. Stat. § 52-304. But the cost of such a bond is beyond the means of most wage-earners (p. 46a; App. 49). Upon application of the debtor, the court may reduce an excessive garnishment after requiring the creditor to state the amount of his claim under oath. Conn. Gen. Stats. §§ 52-301, 52-302. Since the statute permits merely the reduction of a garnishment which unreasonably exceeds the creditor's "apparent claim," the court is barred from dissolving the garnishment unless the creditor refuses to appear as required. Conn. Gen. Stat. § 52-302. Although the creditor's claim "normally reflects the highest conceivable damages, costs and interest," Stephenson, *supra* at 157, garnishment in excess of this sum is permissible. Conn. Gen. Stat. § 52-302. It is, moreover, difficult to establish that the creditor's claim is inflated, Stephenson, *supra* at 216, since the court lacks jurisdiction

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[6] E.g., *Remington Arms Co. v. Feeney Tool Co.*, 97 Conn. 129, 115 A. 629 (1921) (debtor barred from recovering overpayment made to a creditor under duress of threatened attachment); *White v. Leary*, 6 Conn. Supp. 37, 38 (1938) (since state law "permits attachment as a matter of right," debtor "can not recover from the plaintiff for any damage resulting," absent a malicious prosecution). In her final brief (filed Sept. 30, 1970, pp. 52-53), Mrs. Lynch advised the court that deputy sheriff Friedler could provide evidence of settlements by alleged debtors in exchange for the release of attached and garnished property.

to inquire into the legal sufficiency of the complaint or the creditor's prospect of recovery. *Sachs v. Nussenbaum*, 92 Conn. 682, 689, 104 A. 393, 395 (1918). Scant protection is thus afforded against an excessive garnishment.

Debtors suffering from excessive garnishments and who are unrepresented by counsel lack the expertise necessary to invoke the state court's limited protection. Without any order or action by the state court, their assets will remain frozen until trial on the merits or settlement of their cases. Similarly, wage-earners like Mrs. Lynch and Mrs. Toro are unable to elicit any assistance from the state court. They cannot afford a surety bond, and their garnishments were not "excessive" in light of their creditors' apparent claims (App. 8, 11-12, 35-36, 39-40). "No statute in this state provides for the release of a garnishment for any other reason." *Clime v. Gregor*, 145 Conn. 74, 77, 138 A.2d 794, 795 (1958). "In the absence of specific statutory authority," *Harris v. Barone*, 147 Conn. 233, 234, 158 A.2d 855 (1960), the power to release a garnishment lies exclusively with the creditor and his attorney. See, e.g., *Monson v. Hawley*, 30 Conn. 51 (1861); *infra*, p. 48a.

Despite *Sniadach*, alleged creditors continue to garnish wages deposited in accounts without prior or subsequent hearing. Compare, *Goldberg v. Kelly*, 397 U.S. 254 (1970). Since settled law of the Connecticut Supreme Court authorizes garnishment in the discretion of the creditor and his attorney, any facts which might be adduced at a hearing are without legal significance. Several months before these wage-earners filed suit in district court, an attorney associated with their counsel sought release of a summary garnishment levied on an indigent client's bank account. Denying relief, the circuit court stated that "this court, recognizing its modest jurisdiction, is faced with and bound by the ruling in *Harris v. Barone*," *supra*, forbidding release of a garnishment in the absence of a statute. *Michael's Jewelers v. Handy*, #CV6-41307 (July 31, 1969). The appellate division granted the creditor's motion to dismiss the appeal, on

the ground that the court's refusal to dissolve the garnishment was not a final decision from which an appeal would lie. Conn. Gen. Stat. § 51-265. *Michael's Jewelers v. Handy*, 6 Conn. Cir. 103, 104-105, 107, 266 A.2d 904, 905, 907 (1969).[7] The court additionally stated that the rule in *Harris v. Barone, supra*, was binding authority and accorded the debtor due process in light of *Sniadach*. 6 Conn. Cir. at 107, 266 A.2d at 906.

Other than verifying his complaint upon application of the debtor to reduce the garnishment, therefore, the creditor need not demonstrate any probable validity to his claim. Nor must he show that the debtor is a non-resident whose property must be garnished for quasi-*in rem* jurisdiction. That the alleged debtor is a responsible individual who will not avoid payment of his legal obligations is similarly irrelevant. Even a showing that the garnishment is an abuse of process will not suffice for its release. *Csakany v. Takacs*, 143 Conn. 485, 487, 123 A.2d 764, 766 (1956). "Our statutes of long-standing permit one who, however mistakenly, claims that he has a right of action against another, to institute an action against him and, as auxiliary to that action, to make an attachment to secure his recovery." *Sachs v. Nussenbaum*, 92 Conn. 682, 688-89, 104 A. 393, 395 (1918).

Unrestrained garnishment in Connecticut invites abuse by deputy sheriffs, e.g., *United States v. Barr*, 295 F.Supp. 889 (S.D. N.Y. 1969); *Scarver v. Allen*, No. 70-C-253, _____ F.Supp. ____ (N.D. Ill. 1970); and by alleged creditors and their attorneys. The Honorable Douglass Wright, Judge of the Superior Court, stressed this danger in an address to newly-admitted members of the Bar:

> "One of your powers is the power to sign writs and subpoenas. This includes the power to attach, to garnish and sequester property. I cannot stress too strongly the awesome power that this is. It is a power not granted to lawyers in most other states.

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[7] Compare, *West v. Zurhorst*, 425 F.2d 919 (2nd Cir. 1970) (refusal to vacate attachment not appealable pursuant to 28 U.S.C. § 1291).

> The power to attach and garnishee is the power to harass. In most states an attachment or a garnishment cannot be obtained except by order of court. In Connecticut, however, you, as Commissioners of the Superior Court, have this innate power in your capacity as attorneys."
>
> Wright, The Duties and Obligations of a Lawyer, 40 Conn. Bar. J. 448, 449 (1966).[8]

Connecticut's wage-earners are trapped in a cruel dilemma. Unable to obtain judicial review, in either state or federal court, of summary garnishments levied on their scare assets, they may be forced by the imperatives of survival to settle claims which lack any validity. If they choose to exercise

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[8]Conn.Gen.Stats. §§ 51-85, 52-89 grant this power to attorneys. Certain restrictions on attorneys' unfettered discretion to attach property have been enacted by the state legislature. Conn.Gen.Stat. § 52-288 requires a court order prior to attaching an automobile. Senator Pickett stated: "This might be labeled as an anti-lawyers bill. It was felt by members of the Judiciary Committee and all people in the General Assembly, that there have been far too many abuses of the attachment procedures. In many examples, we have found that attorneys have been using this very serious and very powerful club, to force payments or settlements of paying by people who perhaps, weren't really liable to pay that claim... We feel that this rather ancient remedy available to creditors is much too strong and therefore, we have curtailed it." Proceedings of the Senate (May 8, 1969), p. 1728. Representative Carrozella, stating why an amendment was deleted permitting an attachment of a motor vehicle only "upon cause shown" and "after hearing," explained, "cause shown I think is implicit in the fact that you have to apply before a Judge." Proceedings of the House of Representatives (May 14, 1969), p. 2965. A court order is otherwise a condition of attachment only in certain specified suits (slander, libel, invasion of privacy); or against certain specified defendants (policemen, teachers). Conn.Gen.Stat. § 52-279.

The above restrictions apply only to attachment and not to garnishment. Stephenson, *supra* at 151-53. Conn.Gen.Stat. § 52-337a requires, as a condition of garnishing a checking account in excess of $5000, that the plaintiff verify to a judge that the debtor is a nonresident, is about to dispose of his property, or may conceal himself. Garnishment of wages in the hands of an employer is prohibited prior to judgment. Conn.Gen.Stat. § 52-361.

their right to a day in court, *Barbier v. Connolly*, 113 U.S. 27, 31 (1885), they must forego the use of property which is necessary for subsistence. Unrestricted garnishment, which erects a barrier to a wage-earner's use of the courts as substantial as an entry fee, *Boddie v. Connecticut, supra*, surely drives "a wage-earning family to the wall." *Sniadach v. Family Finance Corp., supra*, 395 U.S. at 341-42.[9] Compare, *Local Loan Co. v. Hunt*, 292 U.S. 234 (1934).

The tragic dilemma faced by Connecticut wage-earners occurs simultaneously with decisions of this Court stressing the preeminent constitutional requirement of maintaining access to the courts. *Boddie v. Connecticut, supra; Flast v. Cohen*, 392 U.S. 83 (1969); *United Mine Workers v. Illinois Bar*, 389 U.S. 217 (1967). See, also, *Report of the National Advisory Commission on Civil Disorders*, p. 286 (Bantam Book 1968); American Law Institute, *Study of the Division of Jurisdiction Between State and Federal Courts*, 4, 24-25, 162-68, 172-76 (1969). The wage-earners in this appeal will demonstrate that the district court's denial to them of a forum for vindicating their constitutional rights was unquestionably erroneous.

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[9] One Connecticut Senator has stated:

> "The attachment laws that we have in Connecticut have been abused. I think we are one of the few states that retain attachment at the institution of a suit. I think as an attorney I could cite many cases where poor people, small people have been attached for one hundred, one hundred fifty, two hundred dollars, and upon calling, I've advised them, take the easy way out and settle it. Regardless of legal rights, undue pressure has been put on them... If a man has a legitimate claim, let the courts determine it."

Proceedings of the Senate (May 31, 1963), p. 2779 (Senator Piccolo).

II. WHERE WAGE-EARNERS ALLEGED THAT CONNECTICUT DEPUTY SHERIFFS, ACTING IN CONCERT WITH ALLEGED CREDITORS AND THEIR ATTORNEYS, DEPRIVED THEM OF THE USE OF THEIR PROPERTY IN VIOLATION OF THE FOURTEENTH AMENDMENT, THEY PROPERLY INVOKED THE JURISDICTION OF THE DISTRICT COURT.

A. The District Court's Dismissal, on the Ground That § 1343(3) Did Not Confer Jurisdiction to Redress Unconstitutional Deprivations of Property, Was Erroneous.

The wage-earners in this appeal invoked the jurisdiction of the district court, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3), to redress the deprivation of Fourteenth Amendment rights by persons acting under color of state law. In so doing, the wage-earners were "on solid ground," *Monroe v. Pape*, 365 U.S. 167, 171 (1961), for

> Allegation of facts constituting a deprivation under color of state authority of a right guaranteed by the Fourteenth Amendment satisfies to that extent the requirement of [§ 1983]. *Id.*

The right of the working poor to use their wages, unimpeded by arbitrary state restrictions, lies at the core of the Fourteenth Amendment. *Infra*, pp. 28-32. In order to enforce its guarantees, §§ 1983 and 1343(3) were enacted as the Ku Klux Act of 1871. 17 Stat. 13. That Act, like the other Acts of Reconstruction to which it is intimately related, must be accorded the full scope commanded by its words and origins. *Jones v. Mayer Co.*, 392 U.S. 409 (1968); *United States v. Price*, 383 U.S. 787 (1966). Yet the district court dismissed the complaints on the ground that § 1343(3) did not confer jurisdiction to redress unconstitutional deprivations of "property." Since the wage-earners had failed, according to the court, to allege an unconstitutional deprivation of "personal liberty," § 1343(3) was inapplicable. Had their garnished wages exceeded $10,000 in value, 28 U.S.C. § 1331 would have accorded them a federal

forum. Since their meager assets are worth far less, the court dismissed the complaints.[10]

The court found support for its dismissal in *Eisen v. Eastman*, 421 F.2d 560 (2nd Cir. 1969). There the court of appeals stated that an "incongruity" would result by

> reading what is now 28 U.S.C. § 1343(3) so broadly that it would cover the entire ground later embraced by the present 28 U.S.C. § 1331, with its requirement of a jurisdictional amount, in all cases where natural persons complained of acts by state officers as violating the Constitution. 421 F.2d at 564.

Interpreting Mr. Justice Stone's concurring opinion in *Hague v. C.I.O.*, 307 U.S. 496, 518 at 531, the court of appeals thus held, "with a good deal less than complete assurance," that §§ 1343(3) and 1983 applied only "whenever the right or immunity is one of personal liberty, not dependent for its existence upon the infringement of property rights." 421 F.2d at 566, 564, 563 n.5.[11]

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[10]This Court's ruling in *Sniadach* hardly sought to protect wealthy persons exclusively. The value of Miss Sniadach's garnished wages was only $31.59. 395 U.S. at 338, 346. As a result of the district court's dismissal, however, only persons who are threatened with garnishment in excess of $10,000 can invoke its jurisdiction. The district court's decision, under which access to the federal court is determined on the basis of wealth, raises serious questions as to the constitutionality of § 1343(3). *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); *Bynum v. Connecticut Commission on Forfeited Rights*, 410 F.2d 173 (2nd Cir. 1969). See, also, *Johnson v. Harder*, No. 35168, ____ F.2d ____ (2nd Cir. 1971), slip opinion at 1473 n.6.

[11]This reasoning has been criticized in numerous journals: Note, 1970 Duke L.J. 819 (1970); Laufer, *Hague v. C.I.O.*: Mr. Justice Stone's Test of Federal Jurisdiction—A reappraisal, 19 Buff.L.Rev. 547 (1970); Note, 49 B.U.L.Rev. 377 (1969); Note, 43 N.Y.U.L.Rev. 1208 (1968); Note, 66 Harv. L.Rev. 1285 (1953). Any alleged overlap between the two statutes occupies only a small portion of the vast terrain of federal jurisdiction created in 1875 by § 1331. Many other jurisdictional statutes "overlap" with § 1331. Indeed since § 1331's enactment in 1875, Congress has created a myriad of federal rights, and conferred jurisdiction in federal courts without regard to amount in controversy. Hart & Wechsler, *The Federal Courts and the Federal System*, 730-1 (1953 ed.).

Mr. Justice Stone's concurring opinion cannot be read to deprive wage-earners of a federal forum to vindicate their Fourteenth Amendment rights. The dispositive portion of his opinion is his assertion, explicitly rejected in *Eisen*, that § 1343(3) "*at least* must be deemed to include suits in which the subject matter is one incapable of valuation." 307 U.S. at 530 (emphasis supplied). *Eisen v. Eastman, supra*, 421 F.2d at 564 n.7. Justice Stone's decision held that § 1343(3) existed not merely to redress violations of the nearly-moribund Privileges and Immunities Clause, upon which Justice Roberts based jurisdiction. 307 U.S. at 512-514. Section 1343(3) also granted jurisdiction to redress violations of the Due Process Clause. *Id.* at 518-32. See, *Monroe v. Pape, supra*, 365 U.S. at 205-206 (Frankfurter, J., dissenting). "It must be remembered that Justice Stone was trying to preserve section 1343(3) jurisdiction from being swallowed by § 1331, not vice versa." Note, 1970 Duke L.J. 819, 837 (1970).[12] Section 1343(3) clearly required

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[12] § 1343(3) had fallen into disuse at the time of Justice Stone's opinion in *Hague*. Note, 66 Harv.L.Rev. 1285, 1286-87 (1953); Gressman, The Unhappy History of Civil Rights Legislation, 50 Mich. L.Rev. 1323 (1952). The Supreme Court had created considerable doubt as to the viability of §§ 1983 and 1343. *Holt v. Indiana Mfg. Co.*, 176 U.S. 68, 72 (1900). Even the right to vote had been accorded a pecuniary valuation to meet the "amount in controversy" requirement of § 1331. E.g., *Wiley v. Sinkler*, 179 U.S. 58 (1900); cf. *Lane v. Wilson*, 307 U.S. 268 (1939).

Holt v. Indiana Mfg. Co., supra, was Justice Stone's lone example of an action to which § 1343 did not apply. 307 U.S. at 530. In *Holt*, a corporation complained of an unconstitutional taxation of its patent rights. Federal courts have long been loath to interfere with the operation of state tax laws. *Matthews v. Rogers*, 284 U.S. 521 (1932); 28 U.S.C. § 1341. See note 22, *infra*. Moreover, Justice Roberts explained the Supreme Court's denial of § 1343 jurisdiction in *Holt* on the ground that the plaintiff was not a natural person. 307 U.S. at 514. Indeed, Mr. Justice Stone stated that the Due Process Clause guarantees the liberty of natural persons only. 307 U.S. at 527. *But see, Northwestern Fertilizing Co. v. Hyde Park*, 18 Fed.Cas. 393 (C.C. Ill. 1873).

the district court to decide the wage-earners' complaints that their Fourteenth Amendment rights, whether of "liberty" or "property," had been violated under color of state authority. *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Rinaldi v. Yeager*, 384 U.S. 305 (1966). Compare, *United States v. Guest*, 383 U.S. 745, 753 (1966).

B. The Inconsistent and Unpredictable Decisions Spawned By the "Personal Liberty–Property Rights" Formula Require Its Rejection as a Test for Determining § 1343(3) Jurisdiction.

The second circuit test for § 1343(3) jurisdiction requires a court to determine whether a litigant has suffered a deprivation of "liberty" or merely of "property." The difficulties inherent in such a judgment have engendered much litigation. The district court's decision is but one of the inconsistent and unpredictable results.

Connecticut's working poor may be deprived of the use of wages essential for subsistence without the rudiments of a hearing. No state avenues exist for contesting the propriety of garnishments levied by alleged creditors, whose claims may lack any validity. Despite these facts, the district court dismissed the complaints. Yet in *Escalera v. New York City Housing Authority*, 425 F.2d 853 (2nd Cir. 1970), cert. den., 39 L.W. 3149 (1970), the second circuit held § 1343 (3) satisfied where the plaintiffs alleged a denial of procedural due process, "a civil right." *Id.* at 864. The plaintiffs in *Escalera* sought the federal court's aid in protecting their leasehold interest in real property, to wit, public housing. The court ordered a panoply of procedure to protect a tenant from the arbitrary levy of a two dollar fine for violation of a minor rule. *Id.* Surely the working poor are no less entitled to the court's solicitude.

In the second circuit, the question whether license revocations or discharges from public employment, without procedural due process, will support § 1343(3) jurisdiction has

produced irreconcilable answers. *Tichon v. Harder*, No. 35151, _____ F.2d _____ (2nd Cir. 1971), repudiated *Escalera's* reasoning:

> For purposes of §1343(3) jurisdiction, the claim that appellant was denied procedural due process has no independent jurisdictional significance... [R]ather, the *Hague* and *Eisen* test focuses on the interests claimed to be injured by the denial of procedural due process, because it is the character of those interests that determines whether the suit involves a 'right of personal liberty' or not. Slip opinion at 1550-51.

Miss Tichon's allegations, that she had been discharged by the state welfare department as a probationary social worker without notice or hearing, established a substantial constitutional question. Slip opinion at 1557. Nevertheless, she was denied a federal forum. Yet *Eisen v. Eastman, supra*, 421 F.2d at 565, suggested that jurisdiction in such cases should be entertained, since they complain of "a deprivation of the personal liberty to pursue a calling of one's choice." But in *Gold v. Lomenzo*, 425 F.2d 959 (2nd Cir. 1970), the court (per Friendly, J.) found jurisdiction where the plaintiff's license to sell real estate would be restored upon payment of $585. Judge Hays, in dissent, argued that the broker had been deprived of a property right only. 425 F.2d at 963. The result in *Gold* was approved in *Tichon*, although the court there held that, for jurisdiction to exist, "the impact on the person's calling must be such as effectively to deprive him of his livelihood." Slip opinion at 1555 n.9.

Summary garnishment may, like summary dismissal from public employment, effectively deprive the low-income wage-earner "of his livelihood." The working poor eke out a barely marginal subsistence, and are frequently struggling (like Mrs. Toro) to remove themselves from the welfare rolls (App. 45-46). Garnishment of only a small sum, with no opportunity for a prior or subsequent hearing, drives "a wage-earning family to the wall." *Sniadach v. Family*

Finance Corp., supra, 395 U.S. at 341-42. The inability to meet life's necessary costs, including work-related expenses, may strip the debtor of his ability to earn a living:

> The power of the individual to earn a living for himself and those dependent upon him is in the nature of a personal liberty quite as much if not more than it is a property right. To preserve its free exercise is of the utmost importance, not only because it is a fundamental private necessity, but because it is a matter of great public concern. From the viewpoint of the wage-earner there is little difference between not earning at all and earning wholly for a creditor. Pauperism may be the necessary result of either. *Local Loan Co. v. Hunt,* 292 U.S. 234, 245 (1934).

See, also, *Truax v. Raich,* 239 U.S. 33, 41 (1915) (cited by Mr. Justice Stone in *Hague v. C.I.O., supra,* 307 U.S. at 531.)

In *Johnson v. Harder,* No. 35168, _____ F.2d _____ (2nd Cir. 1971), the court upheld, in the wake of contradictory district court opinions, §1343(3) jurisdiction where welfare recipients mounted a colorable constitutional challenge to a state's public assistance program.[13] *Johnson* establishes "*at*

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[13] By upholding jurisdiction in all such challenges, *Johnson* claimed to end the confusion as to § 1343(3)'s applicability in welfare cases. Slip opinion at 1473 n.6., 1474. Compare, *Solman v. Shapiro,* 300 F. Supp. 409 (D. Conn. 1969), affirmed, 396 U.S. 5 (1969), with, *Johnson v. Harder,* 318 F.Supp. 1274 (D.Conn. 1970), reversed, ____ F.2d ____ (2nd Cir: 1971). In *Russo v. Shapiro,* 309 F.Supp. 385, 391 (D.Conn. 1969), the district court accepted jurisdiction over plaintiffs' constitutional challenge to a welfare policy granting them a maximum of thirty dollars for school clothing, on the ground of the children's "'liberty'...to have clothing to wear to school." In *Middagh v. Harder,* ____ F.Supp. ____, No. 13,662 (D.Conn. 1970), the identical policy denied any school clothing allowance to AFDC children, regardless of their need, who had received income from summer employment or whose parents received incentive earnings. The district court refused jurisdiction on the ground that plaintiff's children had not been deprived of a "liberty."

This confusion, however, was revived in *Roberts v. Harder,* No. 35816, ____ F.2d ____ (2nd Cir. 1971), affirming, 320 F.Supp.

the very least, that deprivation of this kind of property, i.e., property necessary to keep a family at subsistence level, is covered by 28 U.S.C. §1343(3)." *Santiago v. McElroy*, 319 F.Supp. 284, 291 (E.D. Pa. 1970) (emphasis added). See, also, *King v. Smith*, 392 U.S. 309 (1968); *Wyman v. Rothstein*, 398 U.S. 275 (1970).

Summary garnishment of scarce assets may destroy a wage-earner's ability to meet his credit obligations. Consumer goods may be repossessed (App. 36, 46-47). "Bounced" checks create the threat of criminal prosecution. Conn. Gen. Stat. §53-361. "Bounced" checks, garnishments, and the judgments which enter in their wake adversely affect a wage-earner's liberty to engage in future transactions by placing him on a blacklist in the credit rating system. This blacklist is described by Congress as "an elaborate mechanism. . . for investigating and evaluating the credit worthiness, credit standing, credit capacity, character and general reputation of consumers." 84 Stat. 1128, 15 U.S.C. § 1681(a)(2) (1970) (Fair Credit Reporting Act §602(a)(2)).

Despite the district court's dismissal, damage to reputation has frequently sufficed for § 1343(3) jurisdiction.[14] In

1313 (D.Conn. 1970), where the court refused jurisdiction on the ground that the arbitrary action of the welfare department did not reduce the total amount payable to the recipient. Slip opinion at 2264.

[14]In *Birnbaum v. Trussell*, 371 F.2d 672 (2nd Cir. 1966), the court held that a physician summarily dismissed from a public hospital was entitled to prior notice and hearing. The court entertained jurisdiction pursuant to §1343(3). In *Tichon v. Harder*, *supra*, the court distinguished *Birnbaum* on the ground that Miss Tichon had "no *accumulated* reputation as a competent worker which the state arbitrarily destroyed." Slip opinion at 1556 (emphasis added). Miss Tichon, a recent graduate in social work who intended to pursue a career in that field, alleged that her vocational opportunities were severely restricted by summary dismissal as a probationary social worker at the welfare department. The court of appeals denied jurisdiction, although Miss Tichon's dismissal might prevent her from ever accumulating the "reservoir of standing and reputation" which Dr. Birnbaum possessed at the time of his expulsion. Slip opinion at 1555. See, also, *Kletschka v. Driver*, 411 F.2d 436, 446-47 (2nd Cir. 1969).

Dale v. Hahn, No. 35059, ____ F.2d ____ (2nd Cir. 1971), the court upheld jurisdiction in a challenge to the unconstitutional appointment of a conservator, since the "stigma" and the "consequences to reputation" "involve more than a property right." Slip opinion at p. 1590. Conservatorship destroyed plaintiff's "normal human relationships with others in her community," such as the "right to enter into legal relations, to control and dispose of property, to enter into contracts, and to sue and be sued." *Id.* The summary deprivation of wage-earners' property and consequent damage to their reputation similarly impairs their ability to contract, control their property, and assert their legal rights in court.

In attempting to apply the "personal liberty-property rights" formula, the second circuit has been keenly aware of its "troublesome history." *Tichon v. Harder, supra*, slip opinion at 1549. One panel of the second circuit has questioned its constitutionality. *Johnson v. Harder, supra*, slip opinion at 1473 n.6. *Eisen's* formula places courts in an insoluble dilemma. If the court seeks to comply with the rule that the "threshold question" of jurisdiction be determined by the allegations of the complaint, *Rosado v. Wyman*, 397 U.S. 397, 402, 403 (1970); *Bell v. Hood*, 327 U.S. 678 (1946), it must speculate as to the interests affected by an unconstitutional deprivation. On the other hand, if the court carefully examines the underlying interests, it converts the question of jurisdiction into a complex factual inquiry. *Tichon v. Harder, supra.* Compare, *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938); *Deutsch v. Hewes St. Realty Corp.*, 359 F.2d 96, 99-100 (2nd Cir. 1966) (in tort actions founded on diversity of citizenship, jurisdiction is determined by plaintiff's good faith statement of amount in controversy).[15]

The second circuit's application of the "personal liberty-property rights" test has created irreconcilable conflicts with

[15] *Tichon's* discussion of the facts was made possible only by reason of a trial in the district court. *Tichon v. Harder*, 308 F.Supp. 839 (D.Conn. 1970).

its own decisions, and with other circuits as well. Indeed, the dismissal by the court below contradicts numerous other opinions on virtually identical issues. *Laprease v. Raymours Furniture Co.*, 315 F.Supp. 716 (N.D. N.Y. 1970). Although the court of appeals for the third circuit has approved *Eisen, National Land and Investment Co. v. Specter*, 428 F.2d 91, 98-100 (3rd Cir. 1970), three-judge courts in that circuit have reached results opposed to the district court's dismissal. *Swarb v. Lennox*, 314 F.Supp. 1091 (E.D. Pa. 1970), prob. juris. noted, 39 L.W. 3424 (1971); *Santiago v. McElroy, supra.* See, also, *Klim v. Jones*, 315 F.Supp. 109 (N.D. Cal. 1970); *Hall v. Garson*, 430 F.2d 430 (5th Cir. 1970); *Fuentes v. Faircloth*, 317 F.Supp. 954 (S.D. Fla. 1970), prob. juris. noted, 39 L.W. 3359 (1971); but see, *McCormick v. First National Bank*, 39 L.W. 2474 (S.D. Fla. 1971).

The *Eisen* formula produces profound uncertainties in the delineation of federal jurisdiction to protect federal constitutional rights. Surely Civil Rights Act jurisdiction must rest on firmer ground than the subtle, tenuous and irrational distinctions spawned by the "personal liberty-property rights" test. Compare, *Sullivan v. Little Hunting Park*, 396 U.S. 229, 248 (1969) (Harlan, J., dissenting).

C. Sections 1983 and 1343(3) Required the District Court to Adjudicate Wage-Earners' Complaints That Persons Acting Under Color of State Law had Garnished Their Accounts In Violation of the Fourteenth Amendment.

1. *The Legislative and Judicial History of Sections 1983 and 1343(3) Conclusively Demonstrate That Those Statutes Were Designed to Redress Deprivations of Property, Without Procedural Due Process or Equal Protection, By Persons Acting Under Color of State Law.*

Summary garnishment arbitrarily deprives the working poor of "the right to enter into legal relations, to control and dispose of property, to enter into contracts, and to sue and be sued." *Dale v. Hahn, supra.* These very rights were deemed fundamental by the first Reconstruction Congress. Civil Rights Act of 1866, 14 Stat. 27; *Jones v. Mayer Co.*, 392 U.S. 409 (1968). Their protection from unconstitutional state action was assured by passage of the Fourteenth Amendment. Sections 1983 and 1343 guaranteed redress for their deprivation in a federal forum. Where no state forum exists to vindicate those rights, as in Connecticut, the responsibility of the federal courts to accept jurisdiction is compelling. *Monroe v. Pape,* 365 U.S. 167, 173-76 (1961).

This Court has traced the origin of § 1983 and its jurisdictional counterpart, § 1343(3), to the Civil Rights Act of 1866, 14 Stat. 27.[16] The Congress which passed the Act of

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[16] *Monroe v. Pape, supra,* 365 U.S. at 171, 183-85; *Adickes v. Kress & Co.,* 398 U.S. 144, 162-3 (1970); *Hague v. C.I.O., supra,* 307 U.S. at 508 n.10 (opinion of Roberts, J.). Where the § 1983 claim alleges constitutional violations by persons acting under color of law, § 1343(3) provides jurisdiction and both sections are construed identically. *Hague v. C.I.O., supra,* 307 U.S. at 529 (opinion of Stone, J.); *Douglas v. City of Jeannette,* 319 U.S. 157, 161 (1943); *Eisen v. Eastman, supra,* 421 F.2d at 563 n.5, 565 n.8; Note, 66 Harv.L.Rev. 1285, 1289 (1953). This case does not present the question whether

1866 guaranteed "broad and sweeping. . .protection," *Sullivan v. Little Hunting Park, Inc., supra,* 396 U.S. at 237, to "basic civil rights." *Jones v. Mayer Co.,* 392 U.S. 409, 432, 434 (1968). Among these were the rights to acquire and dispose of property. The Act

> "would affirmatively secure for all men, whatever their race or color, what [Senator Trumbull] called the 'great fundamental rights': the right to acquire property, the right to go and come at pleasure, the right to enforce rights in the courts, to make contracts, and to inherit and dispose of property:" *Id.* at 432.

One purpose of the Act of 1866 was to overturn the Black Codes. Frank and Munro, The Original Understanding of "Equal Protection of the Laws," 50 Colum. L.Rev. 131, 144-45 (1950); *Slaughter-House Cases,* 83 U.S. 36, 70 (1873). These codes deprived Negroes of the "commonest rights of human nature," including "the right to collect their wages by the processes of the law." Cong. Globe, 39th Cong., 1st Sess., 3034-35, App. 219 (1866); Bickel, The Original Understanding and the Segregation Decision, 69 Harv. L.Rev. 1, 52-53 (1955).

The Fourteenth Amendment vindicates for all persons the rights established by the Act of 1866.[17] Despite the Amendment's immediate purpose of shielding the recently-emancipated Negro,

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the reach of §§ 1983 and 1343 is coextensive in all cases. *Compare, McCall v. Shapiro,* 416 F.2d 246 (2nd Cir. 1969), with, *Gomez v. Florida State Employment Service,* 417 F.2d 569, 579-81 (5th Cir. 1969). See *King v. Smith,* 392 U.S. 309, 312 n.3 (1968).

[17]The Fourteenth Amendment was based upon the Civil Rights Act of 1866. One reason for adopting the Amendment was to assure the Act's constitutionality. *Monroe v. Pape, supra,* 365 U.S. at 171; *Railroad Tax Cases,* 13 Fed. Rep. 722, 739 (C.C. Cal. 1882); *Hurd v. Hodge,* 334 U.S. 24, 32-33 (1948); *Hague v. C.I.O., supra,* 307 U.S. at 509-510; Flack, *The Adoption of the Fourteenth Amendment,* pp. 75-78, 81, 90-91, 94-97 (1908).

> "the generality of the language used extends the protection of its provisions to persons of every race and condition against discriminating and hostile state action of any kind." *Railroad Tax Cases,* 13 F. 722, 740 (C.C. Cal. 1882).

See, also, *Slaughter-House Cases, supra,* 83 U.S. at 72; Bickel, *supra,* 69 Harv. L. Rev. at 60.

The Fourteenth Amendment unequivocally protects from unconstitutional state action "the right to acquire and possess property of every kind," as a fundamental privilege "which belong[s] of right to the citizens of all free governments." *Slaughter-House Cases, supra,* 83 U.S. at 76 (quoting from *Corfield v. Coryell,* 6 Fed. Cas. 546, 551 (1823)).

> "It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own, and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential pre-condition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee." *Shelley v. Kraemer,* 334 U.S. 1, 10 (1948).[18]

Congressmen debating both the Act of 1866 and the Fourteenth Amendment agreed unanimously that those enactments protected the "civil rights" to acquire, hold, and dispose of property. Whether voting, access to public accommodations, and attendance at integrated schools were similarly protected was hotly disputed. Flack, *supra,* at 21-30, 40-54; Bickel, *supra,* 69 Harv. L. Rev. at 56-58. Summary garnishment, which denies the working poor the fruits of their labor without the barest safeguard of even cursory

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[18] See, also, *Buchanan v. Warley,* 245 U.S. 60, 74, 76, 77, 79 (1917); *Scott v. City of Toledo,* 36 F. 385, 395-96 (C.C. Ohio 1888); *Northwestern Fertilizing Co. v. Hyde Park,* 18 Fed. Cases 393 (C.C. Ill. 1873); *Railroad Tax Cases, supra,* 13 F. at 762-63 (Sawyer, J., concurring); *Chicago B & Q R. Co. v. Chicago,* 166 U.S. 226, 235-36 (1897).

judicial supervision, thus violates rights which lie at the core of the Fourteenth Amendment.

Against this background, sections 1983 and 1343 were included as § 1 of the Ku Klux Act of 1871. *Supra*, note 16; *Wisconsin v. Constantineau*, 39 L.W. 4128, 4129 n.4 (1971). Widespread deprivation in the southern states of life, liberty and property, "which include all civil rights that men have," *Civil Rights Cases*, 109 U.S. 3, 13 (1883), endangered the success of the Reconstruction enactments. *Monroe v. Pape, supra.* The denial of these fundamental rights without constitutional safeguards resulted in passage of the Act of 1871 "to enforce the Provisions of the Fourteenth Amendment." 17 Stat. 13; *Monroe v. Pape, supra*, 365 U.S. at 171. Its legislative history is characterized by a "tone...of overflowing protection of constitutional rights." *Id.* at 196 (Harlan, J., concurring), 253 (Frankfurter, J., dissenting).[19] Representative Shellabarger, who chaired the House Select Committee which drafted the Ku Klux Act,[20] stated that § 1983 was "carefully confined to giving a civil action for such wrongs against citizenship as are done under color of state laws." The rights of all persons which § 1983 would protect from unconstitutional deprivation, he explained, include the "fundamental" right "to acquire and possess property of every kind." Cong. Globe, 42nd Congress, 1st Sess., App. 68-69 (quoting from *Corfield v. Coryell, supra*).

The Reconstruction Congresses did not write their landmark legislation on a clean slate. It was a "settled principle," *Pierson v. Ray*, 386 U.S. 547, 554 (1967), that rights

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[19]The legislative history of § 1983 is examined in *Monroe v. Pape, supra;* Note, *supra*, 1970 Duke L.J. 819, 833-39 (1970); Note, 21 Rutg. L. Rev. 92, 105-112 (1966).

[20]*Monroe v. Pape, supra*, 365 U.S. at 228 n.41 (Frankfurter, J., dissenting).

in property were essential "civil rights."[21] Where low-income wage-earners have been denied the use of wages necessary for subsistence, without a scintilla of due process and without any redress in the state courts, surely they too have suffered deprivation of "basic civil rights." *Jones v. Mayer Co., supra,* 392 U.S. at 427, 432, 434; *Hague v. C.I.O., supra,* 307 U.S. at 509 (opinion of Roberts, J.); tenBroek,

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[21] Locke, *Of Civil Government,* 179-80 (Everyman's Library ed. 1936); S. Adams, "The Rights of the Colonists" (1772) [in Coker, *Democracy, Liberty, and Property,* 320-21 (1948)]; J. Adams, "A Defense of the Constitutions of Government of the United States of America" (1787-88) [in *id.* at 125-26]; J. Adams, *Discourses on Davila,* (1789-90) [in *id.* at 466]; Blackstone, *Commentaries,* Vol. I, p. 139 (12th Ed. 1794). The term "civil rights" included property rights, and was distinguished from "political rights." Blackstone, *Commentaries,* Vol. I, pp. 127-29 (14th Ed. 1803); Kent, *Commentaries,* Vol. II, pp. 1-6 (4th Ed. 1840); Flack, *The Adoption of the Fourteenth Amendment,* pp. 21, 22, 24-30, 34-35, 40-41, 51-54 (1908); tenBroek, *The Antislavery Origins of the Fourteenth Amendment, supra,* Chapter X. Compare, *Jones v. Mayer Co., supra,* 392 U.S. at 473-74 (Harlan, J., dissenting); *United States v. Arizona,* 39 L.W. 4027, 4041-42 (1970) (opinion of Harlan, J.).

The view that "property rights" are separable from, or a threat to, "personal liberty" is of fairly recent origin in this country. Professor Reich traces this view to the development of vast aggregations of private power in the modern corporation. Reich, The New Property, 73 Yale L.J. 733, 771-74 (1964). This development, however, should not obscure the fact that:

> "Property performs the function of maintaining independence, dignity and pluralism in society by creating zones within which the majority has to yield to the owner.... The Bill of Rights also serves this function, but while the Bill of Rights comes into play only at extraordinary moments of conflict or crisis, property affords day-to-day protection in the ordinary affairs of life. Indeed, in the final analysis the Bill of Rights depends upon the existence of private property." *Id.* at 771.

In the absence of protection to property, therefore, "almost all other rights would become worthless." *Chicago B & Q R. Co. v. Chicago,* 166 U.S. 226, 235-36 (1897).

See, e.g., *Goldberg v. Kelly,* 397 U.S. 254 (1970).

The Antislavery Origins of the Fourteenth Amendment, Chapter X and pp. 160-61 (1951).

2. *28 U.S.C. § 1331 Has Not Restricted the Scope of Civil Rights Act Jurisdiction.*

Section 1331's passage by Act of March 3, 1875, 18 Stat. 470, was a "revolutionary" development. Frankfurter & Landis, *The Business of the Supreme Court*, 65 (1928). For the first time, "the vast range of power which had lain dormant in the constitution since 1789," *id.*, was conferred on federal courts to hear all cases arising under the Constitution and laws. Constitution, Article III § 2. The broad scope of § 1331 conforms with the far-reaching expansion of federal authority wrought by the other Reconstruction enactments. The Act of 1875 therefore "clearly is part of, rather than an exception to, the trend of the legislation which preceded it." Chadbourn, Original Jurisdiction of Federal Questions, 90 U.Pa. L.Rev. 639, 645 (1942); *Zwickler v. Koota*, 389 U.S. 241, 245-48 (1967).

In view of the expansive purpose of the Act of 1875, the second circuit's conclusion in *Eisen v. Eastman, supra*, that § 1331 restricts the scope of § 1343 jurisdiction is insupportable. The only significant legislative history of the Act of 1875, enacted only four years after the Ku Klux Act, is the draftsman's statement that the Act gives precisely the jurisdiction which the Constitution confers. Chadbourn, *supra*, 90 U.Pa. L.Rev. at 642-43. Not the faintest glimmer appears of a Congressional intent to limit the scope of §§ 1983 and 1343.[22]

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[22] By contrast, federal jurisdiction to restrain the enforcement of state tax laws has been explicitly restricted by Congress, 28 U.S.C. § 1341, and by long-standing judicial policy. *Matthews v. Rogers*, 284 U.S. 521 (1932); *Dows v. City of Chicago*, 11 Wall. 108 (1870). See *Virginia Coupon Cases*, 114 U.S. 317 *et seq.* (1885); *Holt v. Indiana Mfg. Co., supra*, note 12; *Abernathy v. Carpenter*, 208 F.Supp. 793 (W.D. Mo. 1962), aff'd. mem., 373 U.S. 241 (1963); *Alterman Transp. Lines v. P.S.C. of Tenn.*, 259 F.Supp. 486 (M.D. Tenn. 1966), aff'd. mem., 386 U.S. 262 (1967); *Hornbeak v. Hamm*, 283 F.Supp.

In *United States v. Price*, *supra*, 383 U.S. at 797 (1966), this Court construed §1983's criminal analogue, upon which §§1983 and 1343 were based, to embrace "*all* of the Constitution and laws of the United States."[23] Absent an unmistakable intention by Congress to the contrary, the Acts of Reconstruction apply today with their original force. "The cardinal rule is that repeals by implication are not favored." *Jones v. Mayer Co.*, *supra*, 392 U.S. at 437; see, also, *Sullivan v. Little Hunting Park*, *supra*, 396 U.S. at 237-38. Compare, *U.S. Bulk Carriers Corp. v. Arguelles*, 39 L.W. 4101, 4103 (1971).

While §1331 lacks a "color of law" requirement, sections 1983 and 1343(3) are "carefully confined to giving a civil action for such wrongs against citizenship as are done under color of state laws." Cong. Globe, 42nd Cong., 1st Session, App. 68 (remarks of Rep. Shellabarger). Thus, where the allegedly unconstitutional action occurs under color of state

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549 (M.D. Ala. 1968), aff'd mem., 393 U.S. 9 (1968); *Gray v. Morgan*, 371 F.2d 172 (7th Cir. 1966); Note, 49 B.U.L.Rev. 377, 388-89 (1969); Note, 43 N.Y.U. L.Rev. 1208, 1213-16 (1968).

Lower federal courts have frequently adverted to these cases as support for a general proposition that § 1343(3) does not grant jurisdiction to redress unconstitutional deprivations of property rights. E.g., *Eisen v. Eastman*, *supra*, 421 F.2d at 564; *Tichon v. Harder*, *supra*. The tax cases, however, do not support this proposition, since a statute requires federal courts to decline jurisdiction. Moreover, abstention in these cases is based on an unwillingness to disrupt a state's "internal economy" by "restraining collection of state taxes." *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 298 (1943). See *Perez v. Ledesma*, 39 L.W. 4214, 4227 n.17 (opinion of Brennan, J.).

[23]Title 18 U.S.C. § 242 is the direct descendant of § 2 of the Civil Rights Act of 1866, *U.S. v. Price*, 383 U.S. at 802-803, upon which § 1983 was modeled. See note 16, *supra*; Cong. Globe, 42nd Congress, 1st Sess., App. 68 (1871) (Rep. Shellabarger). Most of § 1983's proponents were members of the Congresses which had passed the Act of 1866 and the other landmark Reconstruction statutes. Kates, Immunity of State Judges Under the Federal Civil Rights Acts, 65 Nw. U. L.Rev. 615, 621 (1970).

law no jurisdictional amount need be alleged. *Adickes v. Kress & Co.*, 398 U.S. 144, 150 (1970). The plain meaning of §§ 1983 and 1343(3), buttressed by their history, reflects Congress' deep concern for maintaining federal vigilance over unconstitutional deprivations, by persons acting under color of state law, of life, liberty and property.

The "personal liberty—property rights" test, pursuant to which the district court dismissed the complaints, emasculates the Act of 1871. Originally designed to provide a forum for the deprived and defenseless, the Act now bars indigent wage-earners from courts in the second circuit, where their fundamental interests are at stake, and where they lack redress in the state courts. No other result could so squarely contradict the intention of the Framers of the Acts of Reconstruction.

III. WHERE WAGE-EARNERS SOUGHT DECLARATORY AND INJUNCTIVE RELIEF, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, AGAINST GARNISHMENTS LEVIED SUMMARILY AND WITHOUT JUDICIAL AUTHORIZATION, CONTROL OR INVOLVEMENT, THE DISTRICT COURT ERRED IN DISMISSING THE COMPLAINTS ON THE GROUND THAT 28 U.S.C. §2283 BARRED THE AWARD OF ANY RELIEF.

A. Summary Garnishments are Not "Proceedings in a State Court," Within the Meaning of 28 U.S.C. §2283.

Under Connecticut law, see *Hill v. Martin*, 296 U.S. 393, 398-401 (1935), the summary garnishment of a resident debtor's account is not a proceeding in a state court, within the meaning of 28 U.S.C. §2283. Garnishment is an out-of-court, non-judicial security remedy to which alleged creditors and their attorneys unilaterally resort, in their absolute discretion, prior to instituting and docketing *in personam* suits in the state court. Compare, *Laprease v. Raymours Furniture Co.*, 315 F.Supp. 716 (N.D. N.Y.

1970.) For a summary garnishment to be effective from the date of levy until trial on the merits, no order, hearing, or action by the state court is necessary. The creditors' damage suits, from which the garnishments are distinct, are the only proceedings pending in the state court. As to those suits, the wage-earners requested neither declaratory nor injunctive relief.

Garnishments are routinely levied, maintained, and released without any involvement or participation by the state courts. The levy of garnishment does not confer jurisdiction upon the court. Indeed, garnishment occurs prior to institution of the creditor's suit. "[T]he service of the garnishment does not begin the action; that occurs only when the defendants are brought within the jurisdiction of the court by service of a writ upon them or by their voluntary appearance." *Young v. Margiotta,* 136 Conn. 429, 433, 71 A.2d 924, 926 (1950); Conn.Gen.Stat. §52-57 (requiring personal or abode service in suits against residents). In *in personam* suits against resident debtors, like the creditors' suits against Mrs. Lynch and Mrs. Toro (App. 26), the levy of garnishment therefore "is ancillary to and distinct from the process of service on the defendant." *Bay State Smelting Corp. v. Rosenfield,* 11 Conn. Supp. 261, 263 (1942); *Young v. Margiotta, supra.* Garnishment "operates merely to secure any judgment that the plaintiff may obtain." Stephenson, *supra* at 253. Contrast, *Gimbel v. Gimbel,* 147 Conn. 561, 564-65, 163 A.2d 451, 453 (1960) (in quasi-*in rem* action against non-residents, levy on defendant's property is essential to court's jurisdiction).

After garnishment is levied, the creditor's *in personam* suit is not a pending state court proceeding until the suit is docketed. *O'Brien v. Banet,* 16 Conn.Supp. 435 (1950). Only after docketing does the suit pass "beyond the physical control of the litigants and into that of the court." *Algonquin Gas Trans. Co. v. Becker,* 25 Conn. Supp. 448, 450, 206 A.2d 846, 847 (1952). Despite the court's control over the creditor's docketed suit, garnishment is "distinct from and independent of" that suit. *Potter v. Appleby,*

136 Conn. 641, 643, 73 A.2d 819, 820 (1950). The garnished property is secured, not under the control of the court, but merely "in the hands of such garnishee." Conn. Gen. Stat. § 52-329. After judgment, the creditor may be required to bring a separate action at law against the garnishee to compel his release of the property. Conn. Gen. Stats. §§ 52-381, 52-367a. See, *Chambers v. Blickle Ford Sales*, 313 F.2d 252, 256 (2nd Cir. 1963).[24]

While no order of court is required for levying, maintaining or releasing a garnishment, the active participation of the state court is essential to the progress of the creditor's docketed suit. Only the court, and not a party, may compel the production of documents, the entry of judgment, and the other incidents of a routine proceeding in a state court. By contrast, from the date of levy until final disposition of the creditor's suit, garnishment is wholly independent of any necessary involvement or participation by the state court. The extremely limited responses which a court *may* make to the garnishment—i.e., ordering the substitution of a surety bond or reducing an excessive garnishment—depend for their initiation upon the debtor. Absent a stimulus from the debtor, an alleged creditor freezes a wage-earner's scarce assets for perhaps several years without any participation by the state court. *Supra*, pp. 13-18. Lacking any dependence upon the order of a court, garnishment

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[24]Contrast the rule forbidding federal interference with property under the control of a court and attached pursuant to the court's order. "The possession of the officer cannot be disturbed . . . because to disturb the possession would be to invade the jurisdiction of the court by whose command it is held." *Covell v. Heyman*, 111 U.S. 176, 179 (1884). See, also, *Javelin Oil Co. v. Morrow*, 266 F.Supp. 119 (W.D. La. 1966); *Moran v. Sturges*, 154 U.S. 256, 287 (1894) (Brewer, J., dissenting): "No one would pretend that the act of a marshal or sheriff in taking possession of property would have any significance unless it were in the execution of some order of the court." See, also, *In Re Chetwood*, 165 U.S. 443, 457, 459 (1897). Connecticut is among the small minority of states permitting garnishment without any judicial intervention whatever. Stephenson, *supra* at 230.

must be deemed an out-of-court, non-judicial security remedy, and not a "proceeding in a state court" within the meaning of § 2283.

The district court recognized that summary garnishment is not a proceeding in a state court. It correctly observed that "garnishment may be separated from the underlying *in personam* action" (App. 26), and that garnishments are levied and released without state court order (p. 48a; App. 23 n. 2). Moreover, the district court identified the proceedings in the state court as "existing creditors' suits" and not as garnishments (App. 26). Although the court did state that service of "garnishment papers. . . began state court proceedings" (App. 26), this conclusion is erroneous as a matter of state law. *Young v. Margiotta, supra.* The district court invoked § 2283 as a bar to relief on the exclusive ground that enjoining garnishments, levied without notice or hearing, would interfere with state court proceedings, i.e., existing creditors' suits. See *infra,* pp. 40-42.

Section 2283 secures "the right of state courts to exert their judicial power." *P.S.C. v. Corboy,* 250 U.S. 153, 161 (1919). It does not shield a private collection remedy from the scrutiny of a federal court, where that remedy is fully effective without any judicial involvement. Since garnishment occurs independently of state court order, review or participation, § 2283's policy of avoiding friction "between two systems of courts having potential jurisdiction over the same subject-matter," *Hale v. Bimco Trading Co.,* 306 U.S. 375, 378 (1939), is simply inapplicable. A federal injunction against pending state court *in personam* suits might indeed cause "unseemly interference with the orderly disposal of litigation in the state court." *Wells Fargo v. Taylor,* 254 U.S. 175, 183 (1920). But injunctive relief against garnishments levied in Connecticut without notice or hearing creates no danger that the federal and Connecticut courts will "fight each other for control of a particular case." *Atlantic Coast Line R. Co. v. Engineers,* 398 U.S. 281, 286 (1970).

B. The Anti-Injunction Statute Does Not Excuse A Federal Court From Considering the Propriety of Declaratory and Future Injunctive Relief, on Behalf of the Named Plaintiffs and Other Similarly Situated.

In holding that 28 U.S.C. § 2283 barred the award of any relief, the district court erred. Irrespective of the question of § 2283's applicability, the court was bound to consider the wage-earners' request for a declaratory judgment. *Zwickler v. Koota*, 389 U.S. 241 (1967); *Johnson v. Lee*, 281 F.Supp. 650, 653 (D.Conn. 1968). The court wholly failed to treat that request. Yet "the plain wording of § 2283 . . . bars only *injunctions* designed to stay court proceedings." *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 198 (1959); *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270 (1941); *Mitchell v. Donovan*, 398 U.S. 427, 430 (1970) (interpreting 28 U.S.C. §1253). Lacking a state forum for adjudicating their claims, indigent Connecticut wage-earners have suffered deprivations which are of sufficient immediacy to qualify for declaratory relief. *Younger v. Harris*, 39 L.W. 4201 (1971); *Perez v. Ledesma*, 39 L.W. 4214, 4216 (1971) (Brennan, J., concurring).

The named Connecticut wage-earners also sought to enjoin prejudgment garnishments which the class of deputy sheriffs and sheriffs would levy, on behalf of alleged creditors, in future state court suits (App. 6, 10, 34, 37-38). Not even arguably would § 2283 bar such an injunction. *Cline v. Frink Dairy Co.*, 274 U.S. 445, 451-3 (1927); *Dombrowski v. Pfister*, 380 U.S. 479, 484 n. 2 (1965); *Ex Parte Young*, 209 U.S. 123 (1908). The court, which dismissed the complaints on the ground that enjoining summary garnishments would probably interfere with *"existing" in personam* suits (App. 26), made no inquiry as to the propriety of prospective relief.

Despite the threat of future garnishment, the court suggested that release of the landlord's garnishment might moot Mrs. Toro's complaint (App. 22 n. 1). But indigent wage-

earners should not be forced to undergo the suffering which future garnishments entail, as a condition to testing their constitutionality, when they have no opportunity to challenge their validity in state court. See, *Younger v. Harris, supra,* 39 L.W. at 4208 n. 2 (Stewart, J., concurring).[25]

The Connecticut wage-earners also requested declaratory and injunctive relief on behalf of the class of persons whose assets were garnished or subject to garnishment in the future. The court held no hearing, pursuant to Rule 23(c), to aid in an informed determination of plaintiff and defendant classes. Based on its holding that it lacked jurisdiction, the court held that a class could consist only of those persons who were deprived of a "personal liberty" by reason of summary garnishment. "No such class could be defined as a practical matter." (App. 25) Since the district court erroneously refused jurisdiction, its holding that the actions were not class actions must be reversed.[26]

C. The District Court's Inference, on a Barren Record and Pursuant to Motions to Dismiss, that Injunctive Relief Against Summary Garnishments would "Probably" Interfere with "Existing Creditors' Suits," was Improper

On a barren record, lacking any evidence, the court invoked § 2283 as a threshold bar to relief on the sole ground that an injunction against summarily-levied garnishments would "probably" interfere substantially with existing state

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[25] The "suggestion of mootness" seems particularly inappropriate in view of the court's denial of Dancosse's request to intervene at the motion to dismiss stage of the action, on the ground that the case was already "fully submitted." R.Doc. No. 29. See, p. 8 and note 5, *supra.*

[26] In her final brief (Sept. 30, 1970, pp. 52-55), Mrs. Lynch detailed the evidence necessary to determine the classes, and stated her intention to develop this evidence through deposition and discovery.

court creditors' suits (App. 26).[27] Nothing in the record supported the court's inference. The only evidence which bore even indirectly on the court's inference tended to refute it. Mrs. Toro's creditor released the garnishment voluntarily, without apparent prejudice to his state court suit. Nothing indicated that the finance company's suit against Mrs. Lynch would encounter "substantial interference" by a federal injunction against garnishments levied without notice or hearing. Nothing suggested that Mrs. Lynch, an employed Connecticut resident who was raising a family and over whom the state court had *in personam* jurisdiction, would evade payment of any judgment that might be rendered against her.

The court failed to define the components of "substantial interference." State law makes evident the fact that garnishment is wholly distinct from the pending *in personam* action; that the absence of garnishment does not affect the court's jurisdiction; and that alleged creditors suffer few of the restrictions on garnishment which pertain elsewhere in the country. It surely strains credulity to argue that "the great object" of these wage-earners' federal suit "is to enjoin and stop litigation in the State courts." *Haines v. Carpenter*, 91 U.S. 254, 257 (1875). Indeed, the class defendants in the federal action, Connecticut deputy sheriffs, were not even parties in the state court. *Hale v. Bimco Trading Co., supra; Chase National Bank v. City of Norwalk*, 291 U.S. 431 (1934).

Whether § 2283 barred relief was not a "threshold question." On a motion to dismiss, the "question is not whether § 2283 bars relief but whether the complaint alleges a basis for equitable relief." *Tyler v. Russell*, 410 F.2d 490, 491 (10th Cir. 1969). The issue of § 2283's applicability may

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[27] This Court has rejected the doctrine that § 2283 forbids a federal court to examine the merits of a case on the ground that it might award relief substantially interfering with state court proceedings. *Kline v. Burke Construction Co.*, 260 U.S. 226 (1922); *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 190-91 (1959).

then be determined "under the allegations and proofs," resulting in a "decision going to the merits of the controversy." *Smith v. Apple*, 264 U.S. 274, 279, 280 (1924); *Toucey v. New York Life Insurance Co.*, 314 U.S. 118, 130 n. 2 (1941). On the barren record before the court, the landlord and the finance company utterly failed to sustain their burden of proof on the motions to dismiss:

> [A] complaint should not be dismissed for failure to state a claim unless it appears *beyond doubt* that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) (emphasis added).

See, also, *Jenkins v. McKeithen*, 395 U.S. 411, 421-422 (1969). In inferring that an injunction "probably" would interfere with existing state *in personam* suits, the district court violated the basic procedural rule ensuring a litigant his day in court.

> "The observations made in the course of the opinion are not, in any proper sense, findings of fact upon these vital issues. Statements of fact are mingled with arguments and inferences for which we find no sufficient basis . . ." *Mayo v. Canning Co.*, 309 U.S. 310, 316 (1940).

D. If Summary Garnishments are Proceedings in a State Court, § 1983 Authorized the District Court to Grant an Injunction on Behalf of Wage-Earners Who are Denied a State Court Forum

If this Court should conclude that garnishments, levied summarily and without judicial involvement, are proceedings in a state court, the district court nevertheless erred in refusing to award injunctive relief. These wage-earners have demonstrated that Connecticut's courts deny them a forum for contesting the validity of garnishments levied on their scarce assets. In this situation, the underpinning of § 2283 and the doctrine of comity, "that courts of equity should

not act . . . when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief," is inapplicable. *Younger v. Harris*, 39 L.W. 4201, 4203. Both § 2283 and the comity doctrine rest

> "on the assumption that state tribunals will adequately protect these rights. Upon a showing that this assumption is unfounded, a federal court may have discretion to intervene despite the general policy." Note, 83 Harv.L.Rev. 1870, 1873 (1970).

Section 1983 was enacted for several distinct purposes. One such purpose was to supply a federal remedy for the vindication of federal rights where state laws were inadequate either in theory or in practice. *Monroe v. Pape, supra*, 365 U.S. at 173-77. Mere inadequacy of state remedy might not be considered sufficiently compelling to require federal intervention. But where, as here, a debtor in a state court civil suit lacks even a forum for raising federal issues of constitutional significance, § 2283 does not apply. Compare, *Local Loan Co. v. Hunt, supra.*

> "[T]o say that Congress can do no such thing as make any law so enforcing these rights, nor open the United States courts to enforce any such laws, but must leave all the protection and law-making to the very States which are denying the protection, is plainly and grossly absurd . . .
>
> If, after all this transcendent profusion of enactment in restraint of the States and affirmative conferment of power on Congress, the States still remain unrestrained, the complete, sole arbiters of power . . . and the United States must stand by a powerless spectator of the overthrow of the rights and liberties of its own citizens, then not only is the profusion of guards put by the fourteenth amendment around our rights a miserable waste of words, but the Government is itself a miserable sham, its citizenship a curse, and the Union not fit to be. Cong. Globe, 42nd Cong., 1st Sess., App. 68, 69 (1871) (Rep. Shellabarger).

See, also, *Hulett v. Julian*, 250 F.Supp. 208 (M.D. Ala. 1966) (three-judge court); *Honey v. Goodman*, 432 F.2d 333, 343 (6th Cir. 1970).

In most instances, state courts are fully qualified to hear and determine issues of federal law which are raised in the context of state court proceedings. *Atlantic Coast Line R. Co. v. Engineers, supra.* Federal interference with such proceedings is therefore generally inappropriate. But the denial by Connecticut of a forum for wage-earners to contest summary garnishments compels federal intervention. Compare, *Lane v. Wilson*, 307 U.S. 268, 274 (1939). The district court's failure to adjudicate the merits of the complaints renders wage-earners without any forum to hear their claims, and vitiates Congress' purpose in enacting § 1983:

> "Indeed, reasonable access to the courts is basic to all other rights protected by the Act [§ 1983], for it is essential to their enforcement." *Stiltner v. Rhay*, 322 F.2d 314, 316 (9th Cir. 1963).

See, also, *Boddie v. Connecticut, supra.*

This Court must not permit wage-earners' substantial Fourteenth Amendment rights to be denied without a hearing in either state or federal court. "It is open to [Connecticut], by changes in the provisions of [its] statutes, to remove this basis for the exercise of equitable jurisdiction by the federal courts, and thus to confine the trial of such cases in the first instance to the state courts." Warren, Federal and State Court Interference, 43 Harv.L.Rev. 345, 377-78 (1930). In the absence of a state judicial forum, however, the district court's dismissal of the complaints must be reversed by this Court.[28]

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[28] If summary garnishments are deemed "proceedings in a state court," § 2283 similarly permits injunctive relief as necessary in aid of the district court's jurisdiction, pursuant to 28 U.S.C. § 1343(3). Absent a state court forum, wage-earners' constitutional rights will otherwise be lost. See, *Caulder v. Durham Housing Authority*, 433 F.2d 998, 1001 (4th Cir. 1970), cert. den., 39 L.W. 3421 (1971).

CONCLUSION

For the reasons above stated, it is respectfully submitted that the judgment of the district court, dismissing the complaints pursuant to the motions to dismiss, should be reversed, and the case remanded for a hearing on the merits.

Respectfully submitted,

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Page

CONTENTS OF APPENDIX

Affidavit of Clarance Jones (included in brief filed with district court, March 4, 1970) 46a

Release of Attachment (included in brief filed with district court, April 30, 1970) 48a

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

DOROTHY LYNCH, ET ALS, :
Plaintiffs,

v. : CIVIL ACTION
NO. _____

HOUSEHOLD FINANCE
CORPORATION, ET ALS,
Defendants

AFFIDAVIT

STATE OF CONNECTICUT)
) ss: New Haven, February
COUNTY OF NEW HAVEN) , 1970

In an effort to secure the posting of a surety bond pursuant to § 52-304 of the Connecticut General Statutes, to release the pre-judgment attachment of $494.83 in the credit union account of Mrs. Dorothy Lynch, I, Clarance Joseph Jones, contacted several bonding and insurance companies. The responses received are described below.

1. In a telephone conversation on February 19, 1970 with Mr. James J. Healy of Golden O'Neill & Gebhardt, Inc., 185 Church Street, New Haven, Connecticut, I was informed that in order for their insurance and surety bond company to write this bond they would need 100% collateralization. Mr. Healy further stated that it is because of the 100% collateral requirement that their company is not called upon to write many bonds of this value.

2. On February 5, 1970 Mr. Paul Kerrigan of Fitzsimons, Kerrigan & Murray, Inc., 242 Orange Street, New Haven,

Connecticut informed me that his bonding company requires full cash collateral and a minimum premium of $20.00 in order to write a surety bond for $494.83.

3. On February 19, 1970, Mr. Joseph Newcomb of the Insurance Company of North America, 999 Asylum Avenue, Hartford, Connecticut, informed me that a surety bond for $494.83 would require full collateralization, as well as the payment of a service charge and a minimum premium of $10.00.

4. In a conversation on February 19, 1970 with a representative of Andrews & Blakelee, Inc., 2 Church Street, North Haven, Connecticut, I was informed that their insurance company normally does not write surety bonds for an amount as low as $494.83.

5. Mr. Richard Chamberlin of Chamberlin Agency, Inc., 433 Campbell Avenue, West Haven, Connecticut, informed me on February 19, 1970 that his insurance company does not write surety bonds for amounts under $2,000.00. Mr. Chamberlin stated further that the premiums on such bonds are low and are not profitable to his company. Moreover, Mr. Chamberlin stated that he would write a bond for the requested amount only to accommodate a policy holder who is a member of his company.

Clarance Joseph Jones

Subscribed and sworn to before me
on this day of February, 1970.*

---

*This affidavit was included in brief filed with district court, March 4, 1970.

CV8-702-9353

EUGENE A. CAMPOSANO	)	
	)	Eighth Circuit Court
v.	)	New Haven County
	)	March 24, 1970
NORMA TORO	)	

RELEASE OF ATTACHMENT

This is to certify that the attachment in the above entitled action of the personal estate of the above-named defendant consisting of funds in Bank Account *in the hands of* Hamden National Bank, 2992 Dixwell Avenue, Hamden, Connecticut *of the above-named defendant is released, and the lien of said attachment is hereby removed.*

Dated at New Haven, *Connecticut, this 24th day of March 1970.*

THE PLAINTIFF,

/s/
By Jerome A. Lacobelle

*His Attorney and Authority signing the Writ.**

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*Included in brief filed with district court, April 30, 1970.